

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Barbara L. Thompson,

Complainant,

vs.

ORDER OF DISMISSAL

Carol LeDoux,

Respondent.

The above-entitled matter came on for a probable cause hearing before Administrative Law William R. Johnson on August 18, 2010, to consider a campaign complaint filed by Barbara Thompson on August 9, 2010. The probable cause hearing was conducted by telephone conference call. The record closed on August 18, 2010.

Barbara Thompson (Complainant) appeared on her own behalf without counsel. Brian Rice, Attorney at Law, appeared on behalf of Carol LeDoux (Respondent).

Based on the record and all of the proceedings in this matter, and for the reasons stated in the attached Memorandum, the Administrative Law Judge finds that there is not probable cause to believe that the Respondent violated Minn. Stat. § 211B.06.

ORDER

IT IS HEREBY ORDERED that the Complainant has failed to demonstrate probable cause to believe that the Respondent violated Minn. Stat. § 211B.06 with respect to her campaign lawn signs. Accordingly, the Complaint is **DISMISSED**.

Dated: August 23, 2010

/s/ William R. Johnson

WILLIAM R. JOHNSON
Administrative Law Judge

Digitally recorded; no transcript prepared

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minnesota Statutes § 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal. If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minnesota Statutes § 211B.35 within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Complaint alleges that Carol LeDoux disseminated false and misleading lawn signs in support of her candidacy for Anoka County Commissioner, 5th District. Ms. LeDoux is running for the seat vacated by her husband and former boxer, Scott LeDoux. In May 2010, Scott LeDoux resigned as Commissioner for Anoka County District 5 due to health reasons. Anoka County left the seat open until the general election.

The campaign lawn signs at issue state:

Vote

LeDoux

Anoka County Commissioner 5th District

Images of boxing gloves appear in the upper corners of the sign and a disclaimer at the bottom of the sign states: "Paid for by the Scott LeDoux Election Committee."

The Complaint contends that the lawn signs are misleading and give the false impression to voters that it is Scott LeDoux, and not Carol LeDoux, who is running for Anoka County's 5th District. Specifically, the Complaint alleges that the failure to state Ms. LeDoux's first name, the inclusion of images of boxing gloves, and the wording of the disclaimer render the lawn signs false campaign material within the meaning of Minn. Stat. § 211B.06. By disseminating the campaign signs, the Complainant maintains Carol LeDoux violated Minn. Stat. § 211B.06.

By Order dated August 11, 2010, the Administrative Law Judge found that the Complaint did set forth a *prima facie* violation of Minn. Stat. § 211B.06. The Administrative Law Judge also noted that, based on the wording of the lawn signs' disclaimer, he would entertain a motion to amend the Complaint to add an allegation that the Respondent violated Minn. Stat. § 211B.04.

Prior to the probable cause hearing, the Respondent submitted evidence that she has undertaken efforts to remediate the possible violation of Minn. Stat. § 211B.04 by covering up the existing disclaimer and affixing her own disclaimer on all the signs. Counsel for the Respondent represented at the probable cause hearing that all of the lawn signs would be corrected in this manner as expeditiously as possible. With that understanding, the Complainant withdrew her motion to amend the Complaint to add an allegation that the Respondent violated Minn. Stat. § 211B.04.¹

Legal Analysis of § 211B.06 Claim

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.² The Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota Supreme Court in *State v. Florence*.³ The purpose of a probable cause determination is to determine whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to address the claims in the Complaint at a hearing on the merits.⁴

Minn. Stat. § 211B.06 prohibits a person from intentionally participating in the preparation or dissemination of campaign material that is false and which the person knows is false or communicates to others with reckless disregard of whether it is false. The term "reckless disregard" was added to the statute in 1998 to expressly incorporate the "actual malice" standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*.⁵

¹ The disclosure requirements in Section 211B.04 were found to be unconstitutional in *Riley v. Jankowski*, 713 N.W.2d 379, 405 (Minn. App.), *rev. denied* (2006). The U.S. Supreme Court recently held in *Citizens United v. FEC*, 558 U.S. 50 (2010), however, that federal disclaimer provisions place no significant burden on First Amendment rights. Following that decision, the Minnesota Legislature amended Minn. Stat. § 211B.04 effective June 1, 2010 to apply to all campaign material prepared and disseminated on or after that date. See Laws of Minnesota 2010 Chapter 397.

² Minn. Stat. § 211B.34, subd. 2.

³ 239 N.W.2d 892 (Minn. 1976); see also Black's Law Dictionary 1219 (7th ed. 1999) (defining "probable cause" as "[a] reasonable ground to suspect that a person has committed or is committing a crime.")

⁴ *State v. Florence*, 239 N.W.2d at 902.

⁵ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *State v. Jude*, 554 N.W.2d 750, 754 (Minn. App. 1996).

Based on this standard, the Complainant has the burden at the hearing to show by clear and convincing evidence that the Respondent prepared or disseminated the material knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondent “in fact entertained serious doubts” as to the truth of the material or acted “with a high degree of awareness” of its probable falsity.⁶

To be found to have violated section 211B.06, therefore, two requirements must be met: (1) a person must intentionally participate in the preparation or dissemination of false campaign material; and (2) the person preparing or disseminating the material must know that the item is false, or act with reckless disregard as to whether it is false. As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact. It is not intended to prevent unfavorable deductions or inferences based on fact, even if misleading.⁷

The uncontroverted evidence is that Ms. LeDoux sought legal advice on the use of the signs from the Anoka County Attorney’s Office before displaying them, and she was advised she could use the signs in her campaign.⁸ On this record, the Complainant has failed to establish that the Respondent disseminated the signs either knowing they were false campaign material or with reckless disregard as to whether they were false material.

After reviewing the Complaint, its attachments, and the additional evidence and argument offered by the parties at the probable cause hearing, the Administrative Law Judge concludes that the Complainant has failed to establish probable cause to believe that Respondent violated Minn. Stat. § 211B.06.

The Complaint is dismissed in its entirety.

W. R. J.

⁶ *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). See also *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), *rev. denied* (Minn. 2006).

⁷ *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).

⁸ LeDoux Affidavit at ¶¶ 8, 9, 11, 13 and 14.